

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

E. SCOTT BRADLEY  
JUDGE

1 The Circle, Suite 2  
GEORGETOWN, DE 19947

March 21, 2016

**STATE MAIL – S980C**

Comar M. Hadley  
SBI # 00335893  
Sussex Correctional Institution  
P.O. Box 500  
Georgetown, DE 19947

***RE: State of Delaware v. Comar M. Hadley***  
***Id No: 1401003782B***

Date Submitted: January 29, 2016

Dear Mr. Hadley:

This is my decision on your Motion for Postconviction Relief. You were charged with nine sex offenses that arose out of your sexual abuse of your daughter. You pled guilty to one count of Rape in the Second Degree. I sentenced you to 25 years at Level 5, suspended after serving 10 years at Level 5 and completion of the Level 5 Transitions Sex Offender Program for declining levels of supervision. This is your first Motion for Postconviction Relief and it was filed in a timely manner.

You allege that 1) your counsel was ineffective, and 2) your guilty plea was coerced. Your counsel has submitted an affidavit responding to your allegations. Given the nature of your allegations, I have concluded that there is no need to appoint

an attorney for you and that a hearing is not necessary. In order to evaluate your allegations, I have to first determine if your counsel's representation of you left you with no choice but to plead guilty and, if it did not, whether you made a knowing, intelligent and voluntary waiver of your rights when you pled guilty.

## **DISCUSSION**

### **I. Ineffective Assistance of Counsel**

You allege that your counsel was ineffective because 1) the medical reports showed that your daughter was never penetrated or sexually abused because her hymen was still intact; 2) your daughter changed her story throughout her interviews; 3) your daughter's grandmother stated that your daughter was lying; and (4) your counsel did not provide you with a fair defense. The United States Supreme Court has established the proper inquiry to be made by courts when deciding a motion for postconviction relief.<sup>1</sup> In order to prevail on a claim for ineffective assistance of counsel pursuant to Superior Court Criminal Rule 61, the defendant must show: "(1) counsel's representation fell below an objective standard of reasonableness; and (2) counsel's actions were so prejudicial that, but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial."<sup>2</sup> Further, a

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<sup>1</sup> *Strickland v. Washington*, 466 U.S. 668 (1984).

<sup>2</sup> *State v. Thompson*, 2003 WL 21244679 (Del. Super. April 15, 2003), *citing Strickland*, 466 U.S. 668 (1984).

defendant “must make and substantiate concrete allegations of actual prejudice or risk summary dismissal.”<sup>3</sup> It is also necessary that the defendant “rebut a ‘strong presumption’ that trial counsel’s representation fell within the ‘wide range of reasonable professional assistance,’ and this Court must eliminate from its consideration the ‘distorting effects of hindsight when viewing that representation.’”<sup>4</sup>

Your counsel was certainly aware of your daughter’s statements and her medical records and your daughter’s grandmother’s statements. The problem for you and your counsel was that you told the police on videotape that you had sexually abused your daughter. The following is an excerpt of your statement:

CH: I’m sorry, man. I didn’t mean to do it. I did it, some, some  
– I did some of the stuff, though.

DT1: Did you put your penis in her mouth? Yes or no. It’s that  
simple. You know the answer to it. So, it’s yes or no.  
(Pause)

CH: I believe so, I did.

DT1: You believe so, you did?

CH: Yeah.

DT1: Did you put your mouth on her vagina?

CH: Yes, sir.

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<sup>3</sup> *State v. Coleman*, 2003 WL 22092724 (Del. Super. Feb. 19, 2003).

<sup>4</sup> *Coleman*, 2003 WL 22092724, at \*2, *quoting Strickland*, 466 U.S. at 689.

DT1: Comar, why?

CH: I was rocked.

DT1: You were what? Rocked?

CH: It's true. She was (UI). I don't know what the fuck I was thinking.

DT1: Did you thinks she was someone else?

CH: I can't even remember. It's been so long ago. Like it has been really so long ago. I can't even really remember, but I remember doing, doing – but far as watching movies, I don't remember watching movies with her. I don't remember that.

DT1: Do you remember licking her vagina?

CH: I would remember that time. But like I said, you know, man, justify what I was doing – what I did was rape. It's not rape. But, you know, once I realized what they – I realized what I had done, I just pray to God because I didn't want to do it anymore. I didn't want to do it anymore. So –

DT1: Are you going to get sick?

CH: No, sir.

DT1: All right.

(Witness crying)

CH: That's why – it wasn't right. I knew, I knew it wasn't right, but – and I couldn't help myself, once I really realize

what I had done. I, I just stopped and then I didn't like it, because I'm not like that. I'm not that person. I knew it wasn't right. I tried to, I tried to keep it behind me.

Your counsel did try to have your videotaped confession suppressed. However, I ruled that the police did not violate your rights when they interviewed you and that your confession would be admissible at your trial. Your counsel filed a Motion for a Bill of Particulars in order to force the State to narrow the time-frame on the various allegations of sexual abuse. I granted it. When the State did not adequately respond to your Bill of Particulars, I gave your counsel the opportunity to take a pretrial deposition of your daughter. Your daughter's deposition was cancelled when you decided to plead guilty. Quite simply, once I ruled that your confession would be admissible there was little your counsel could do for you. There is nothing about your allegations that would allow me to conclude that your counsel's representation of you was deficient and left you with no choice but to plead guilty.

## **II. Waiver of Trial Rights**

You allege that your guilty plea was coerced because 1) the rape charges against you were dropped to unlawful sexual conduct against a child at arraignment but raised again later; and 2) your counsel intimidated you into accepting the State's plea offer. The grand jury issued a 10-count indictment against you on March 3, 2014. There was one count of Continuous Sexual Abuse of a Child and nine counts

of Sex Offender Unlawful Sexual Conduct Against a Child. You were arraigned on April 10, 2014. The charges against you were not changed at that time. The grand jury issued a superceding nine-count indictment against you on October 6, 2014. There was one count of Rape in the Second Degree and eight counts of Sex Offender Unlawful Sexual Conduct Against a Child. You pled guilty on December 2, 2014. I have reviewed the Truth-in-Sentencing Guilty Plea Form and the plea colloquy and determined that you made a knowing, intelligent and voluntary waiver of your rights. Before accepting a guilty plea, the trial court must engage the defendant in a series of questions in open court in order to determine the voluntariness of the plea.<sup>5</sup> This plea colloquy must be preserved on the record and the judge must determine that the defendant realizes and understands the nature of the charges and the various penalties provided for that offense.<sup>6</sup> “The record must reflect that a defendant understands that the guilty plea constitutes a waiver of a trial on the charges and the various constitutional rights to which he would have been entitled had he gone to trial.”<sup>7</sup> “A defendant’s statements to the Superior Court during the guilty plea colloquy are

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<sup>5</sup> *Weeks v. State*, 653 A.2d 266, 269 (Del. 1995).

<sup>6</sup> *Sullivan v. State*, 636 A.2d 931, 937 (Del. 1994).

<sup>7</sup> *Id.*

presumed to be truthful.”<sup>8</sup> Where the defendant has signed his Truth-In-Sentencing Guilty Plea Form and answered at the plea colloquy that he understands the effects of the plea, the defendant must show by clear and convincing evidence that he did not sign this form knowingly and voluntarily.<sup>9</sup>

The record establishes that you understood the rights you waived and did so voluntarily. This is established by your answers to the questions on the Truth-in-Sentencing Guilty Plea Form and your answers during the plea colloquy. The following are the applicable questions and your answers on the Truth-in-Sentencing Guilty Plea Form.

Have you freely and voluntarily decided to plead guilty to the charge listed in the written plea agreement?

You answered “yes.”

Have you been promised anything that is not stated in your written plea agreement?

You answered “no.”

Has your lawyer, the State, or anyone threatened or forced you to enter this plea?

You answered “no.”

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<sup>8</sup> *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

<sup>9</sup> *Savage v. State*, 815 A.2d 349, 2003 WL 214963, at \*2 (Del. Jan. 31, 2003)(Table).

Do you understand that because you are pleading guilty you will not have a trial, and therefore waive (give up) your constitutional rights:

- (1) to have a lawyer represent you at trial
- (2) to be presumed innocent until the State can prove each and every part of the charge(s) against you beyond a reasonable doubt;
- (3) to a speedy and public trial by jury;
- (4) to hear and question witnesses against you;
- (5) to present evidence in your defense;
- (6) to testify or not testify yourself; and,
- (7) to appeal, if convicted, to the Delaware Supreme Court with the assistance of a lawyer?

You answered “yes.”

The following is an excerpt from your Plea Colloquy:

The Court: I understand you’ve decided to plead guilty to the charge of rape in the second degree; is that what you’ve decided to do?

The Defendant: Yeah.

The Court: Do you understand the nature of that offense?

The Defendant: (Indicates affirmatively.)

The Court: Do you understand the maximum period of incarceration you face?

The Defendant: Yes.

The Court: Do you understand you will have to register as a sex offender?

The Defendant: Yes.

The Court: You have certain rights, Mr. Hadley. Those rights are listed



on the Truth-in-Sentencing Guilty Plea Form which you've already signed. Have you discussed those rights with [your counsel]?

The Defendant: Yes.

The Court: Do you understand each and every one of those rights?

The Defendant: Yes.

The Court: Do you understand that as a result of taking the plea, you're waiving all those rights and there won't be a trial?

The Defendant: Yes.

The Court: Do you understand you must receive a sentence of at least 10 years in jail?

The Defendant: Yes.

The Court: Did anybody force you to take this plea?

The Defendant: No.

The Court: Did anybody promise you anything for it?

The Defendant: No.

The Court: Did you commit the offense you're pleading guilty to, Mr. Hadley?

The Defendant: Yes.

The Court: Are you satisfied with [your counsel's] representation of you?

The Defendant: Yes.<sup>10</sup>

I am satisfied now, just as I was when you entered your guilty plea on December 2, 2014, that you made a knowing, intelligent and voluntary decision to waive your rights. Given your answers on the Truth-in-Sentencing Guilty Plea Form and during the plea colloquy there is simply no reason for me to believe that the changes in your charges and/or your counsel's actions caused you to plead guilty when you did not want to do so. Your allegations are without merit. Therefore, I have denied your Motion for Postconviction Relief.

**IT IS SO ORDERED.**

Very truly yours,

*/s/ E. Scott Bradley*

E. Scott Bradley

cc: Prothonotary  
Counsel

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<sup>10</sup> Hearing Transcript at 3-4 (December 2, 2014).